



3. I was presented with a copy of the Plaintiff Thomas Weisel Partners LLC's Consolidated Opposition to Defendants' Motions to Dismiss Plaintiffs First Amended Complaint. I reviewed the statements made therein with respect to the delay and backlog of cases in India.

4. Due to my past experience and years of practice in the Supreme Court of India, I was requested to give this declaration setting out the procedure followed in the civil courts in India with particular reference to the disposal of cases in Bombay, the amendments to the Civil Procedure Code ("CPC") followed by the Courts in India, as well as other recent developments in Indian judicial system.

#### **REPLY TO MR.DESAI**

5. At the outset, I must point out that Mr.S.K.Desai's declaration relies to a large extent on information accessed from the official website of the Bombay High Court, which is <http://bombayhighcourt.nic.in/>. The information available here is divided into three categories:

- a. Institution / Disposal of cases
- b. Classification of Pending cases
- c. Judgewise Disposal of cases

Mr. Desai's declaration only discloses the data carried at (a) and (b) above, but does not divulge information that is most vital to the present issue, which is available at (c). It is only by studying the facts concerning the *disposal* of cases at the Bombay High Court that one would be in a position to understand the likely duration of proceedings to be commenced in India. I am surprised that Mr.Desai did not deem it fit to adduce this information as evidence. (See EXHIBIT – A which is a screenshot of the relevant webpage).

6. Mr. Desai has also emphasized the fact that the Bombay High Court has only 59 judges, while even Exhibit-A to his statement shows that the strength of the Court is 64. I am

annexing a true screenshot of the homepage of the Court which shows that the strength of the Court is actually 75. (See EXHIBIT – B).

7. In addition to the above, I must also point out that the High Court of Bombay may not necessarily be the proper forum for the resolution of the present dispute if it were to be agitated here. There have been steps adopted for the transfer of the Original Jurisdiction of the High Court to the local civil courts in Bombay, so that the backlog may be further reduced. This has in fact received the imprimatur of the Supreme Court of India, and steps are underway to ensure that these transfers of the civil suits be done at the earliest.

8. As per the records of the Bombay High Court dated 23<sup>rd</sup> February 2007, and which are contained on the website of the Court, in just the year 2006, the High Court disposed off a whopping 139183 cases. (See EXHIBIT C) This, over a period of merely 12 months gives an average of 2174 cases disposed of by each of the 64 judges who were sitting at the time. An examination of this exhibit would further show that as many as 6 of these judges were appointed as late as September, thereby bringing down the average disposal per judge. The improved disposal rate of the last year, 2007, is available from the quarterly tables of the same website. (See EXHIBITS D, E, F and G). Therefore, even if one were to accept Mr. Desai's statement that 42,464 suits are pending in the courts, their disposal would not be as exaggerated as is portrayed by his dim view of the Indian judicial system. In fact, nearly a fifth of the number of cases in backlog are being disposed of every year.

9. I also state that a large number of the cases that are pending in the Bombay Courts are so delayed due to the subject matter involved. Almost all property disputes involving the various municipal and national legislations are given last priority, as the possession of the

occupant in question is protected by adequate interlocutory orders. The situation would be very different in the present case.

10. I will use in support two of the cases cited earlier by the Defendants in the very context of the enforceability of a negative covenant in India.

- a. The first of these is *Percept D'Mark v. Zaheer Khan*, (2006) 4 SCC 227. Here, the proceedings were commenced by the Plaintiff in the Bombay High Court in 2003, and the judgement was delivered in December *the same year*. The appeal from this was preferred to the Supreme Court and finally decided on March 22, 2006. From initiation at the original stage in the Bombay High Court, to conclusion at the Supreme Court, this entire matter has taken less than 3 years.
- b. The other is *Gujarat Bottling Co. Ltd. v. Coca Cola Co.*, (1995) 5 SCC 545, where the proceeding were commenced, once again in the Bombay High Court in 1995, and were finally disposed off in the same year, i.e. 1995, by the Supreme Court on appeal.

11. It is clear that in the very context of this dispute, and in the very Court about which the Plaintiffs have apprehensions, matters are disposed of fairly quickly, and I would not imagine that they would sustain for longer than 3 to 4 years.

#### **THE PROCEDURE**

12. The procedure followed in civil courts in India is governed by the CPC. Some of the provisions of the CPC have been amended by the Code of Civil Procedure (Amendment) Act, 1999 and Code of Civil Procedure (Amendment) Act, 2002. The amendments made in the CPC came into force on December 30, 1999 and July 1, 2002 respectively. The purpose and reasons



for adopting amendments to CPC were outlined in a Bill introduced in the Parliament and have been incorporated in Code of Civil Procedure (Amendment) Act, 2002. As outlined in these provisions, the main objective of these efforts is to reduce the delay backlog of civil cases in Indian Courts.

13. These amendments were made to the provisions of CPC that deal with the procedural aspects of civil cases. These amendments include: (i) the summons are to be delivered to the defendant within a certain time; (ii) written statements (statement of defense) have to be filed within thirty days and not beyond ninety days from the date of institution of the suits; (iii) amendments to the pleading are not permitted unless necessary; (iv) trial is now to be conducted by the Joint Registrar or Commissioner appointed by the Court at no or very nominal fee; (v) time for the oral arguments to be made by the parties is for fixed period only, and the judgment is to be given within a fixed period of time ordered by the court after hearing the matter.

14. The hearing of pleadings is governed by the amended provisions of CPC. For example, Order VIII Rule 1 of amended CPC provides that the Written Statement (the Response Statement) is required to be filed within thirty (30) days from date of service of summons on the Defendant which can be extended but for no longer than ninety (90) days. Therefore, in accordance with the revised provisions of the CPC, the pleadings can be completed within one to four months if the leave for filing the Rejoinder/Replication is granted from the date of registration of the suit in the Bombay High Court.

15. As a result of the amendments to the provisions of CPC, the time taken in proceedings in the Bombay High Court have been considerably reduced. As a result, the estimated time taken at various stages in the suit is presently about 4 to 5 years.

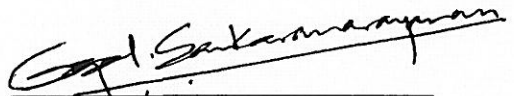
16. The Indian Government also recently increased the number of Judges on the bench, thus lowering the rate of pending cases considerably and expediting the period for hearing of the pleadings and cases.

17. Presently, there are a sanctioned total of 75 judges in the High Court of Bombay who work five days a week and are hearing as well as disposing suits/petitions filed and pending before it.

18. In sum, as a consequence of recent amendments to relevant Indian laws, specifically the CPC, and the Indian Governments' efforts to decrease the delay in hearing cases by Indian courts, the average timeframe for hearing and adjudicated on civil cases such as the present one is 3 to 4 years.

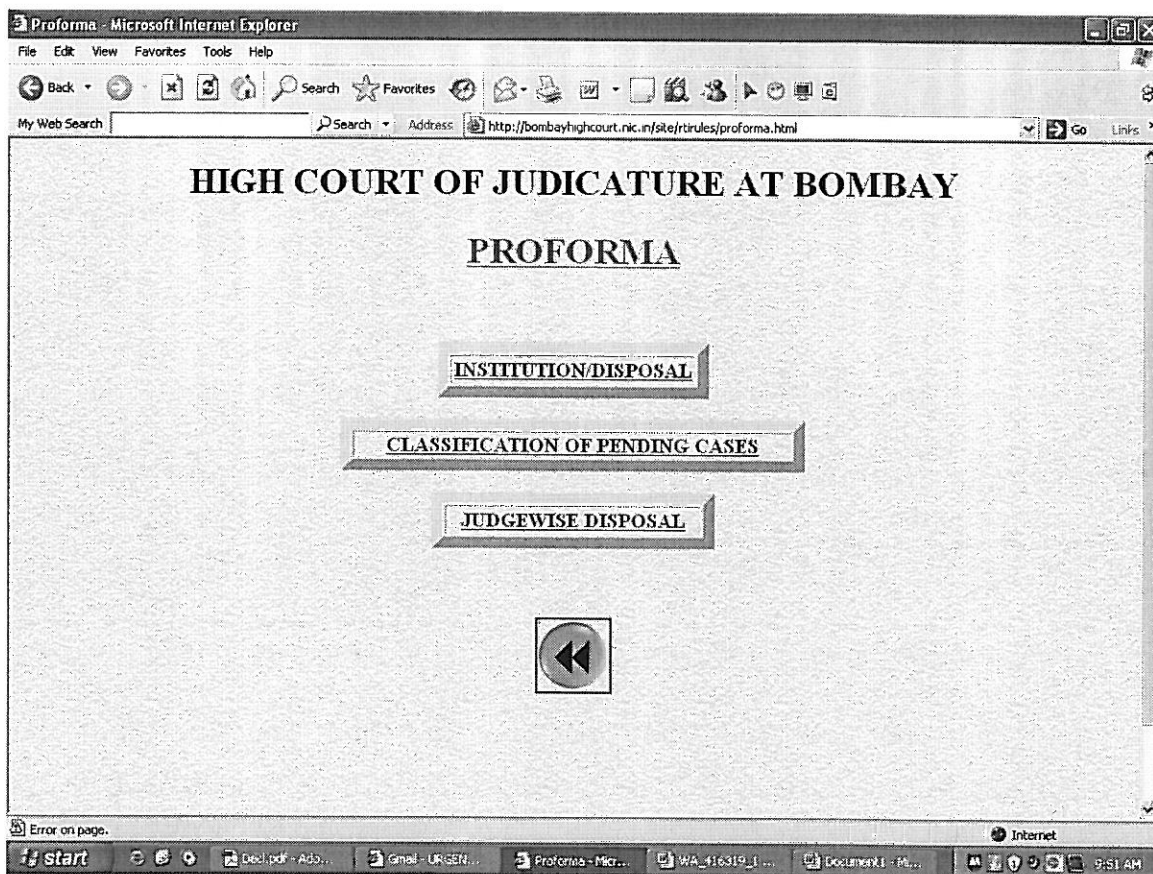
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 5, 2008.

  
Gopal Sankaranarayanan,  
[Advocate, Supreme Court of India]

# Exhibit A

## EXHIBIT – A : Screenshot of the Information webpage





# Exhibit B

**EXHIBIT – B : Screenshot of the Homepage of the Bombay High Court**


Bombay High Court Official Website - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Forward Stop Reload Home Search Favorites Print Mail News RSS Feeds

My Web Search Search Address http://bombayhighcourt.nic.in/ Go Links

## Bombay High Court



**History**  
**Chief Justices**  
**Judges**  
**Officers**  
**Proceeding**  
**Cause Lists**  
**Sitting Lists**  
**Court Orders**  
**Case Status**  
**Pictures**  
**Legal Services**  
**Calendar**  
**RTI Rules/Information**  
**Guidelines/Resolution**  
**District Court Website**  
**District Judges**  
**Wam Lists**  
**Other Links**  
**Latest Updates**  
**Tenders**  
**Company Matters**  
**Recruitment**

CH CW VAC TD

< Aug 2008 >

Mo	Tu	We	Th	Fr	Sa	Su
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4	5	6	7	8	9	10
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18	19	20	21	22	23	24
25	26	27	28	29	30	31

Today : Aug 5, 2008

### Updates

Draft of Praecipe

[Maharashtra Govt](#)

[India Image](#)

The Bombay High Court is one of the oldest and chartered High Courts in the Country. It has Appellate Jurisdiction over the State of Maharashtra, Goa , Daman & Diu. In addition to Bombay Bench it has benches at Aurangabad, Nagpur, Panaji(Goa). In Bombay it has Original Jurisdiction in addition to Appellate. The Bombay High Court has sanctioned strength of 75 judges.

**DISCLAIMER :-** Every Effort has been made to ensure accuracy of information on this site. The Information is supplied by Bombay High Court National Informatics Centre(NIC) will not be responsible for any Information that may be incorrect.

Email address (i.e. hcbom.msh@nic.in) is only for feed back pertaining to web site related queries, anyother querier please follow the officer information hyperlink

Done

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# Exhibit C

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE & ORIGINAL SIDE  
INCLUDING ITS BENCHES AT NAGPUR, AURANGABAD AND PANAJI- GOA**

**STATEMENT SHOWING THE DISPOSAL OF CASES  
BY THE HON'BLE JUDGES IN THE YEAR 2006**

<b><i>NAME OF THE HON'BLE JUDGES</i></b>	<b><i>NUMBER OF CASES DISPOSED DURING THE YEAR 2006</i></b>	<b><i>REMARK</i></b>
THE HON'BLE THE CHIEF JUSTICE	1644	
THE HON'BLE THE ACTING CHIEF JUSTICE	1470	
SHRI JUSTICE V. G. PALSHIKAR	1609	
SHRI JUSTICE H. L. GOKHALE	1273	
SHRI JUSTICE R. M. LODHA	1997	
SHRI JUSTICE J. N. PATEL	2109	
SHRI JUSTICE D. G. DESHPANDE	2175	
SHRI JUSTICE S. B. MHASE	1328	
SHRI JUSTICE DR. S. RADHAKRISHNAN	2351	
SHRI JUSTICE R. M. S. KHANDEPARKAR	1092	
SHRI JUSTICE F. I. REBELLO	3521	
SMT. JUSTICE RANJANA P. DESAI	1768	
SHRI JUSTICE D. K. DESHMUKH	3457	
SHRI JUSTICE D. D. SINHA	3688	
SHRI JUSTICE B. H. MARLAPALLE	2302	
SHRI JUSTICE P. S. BRAHME	892	
SHRI JUSTICE S. K. SHAH	1278	
SHRI JUSTICE N. V. DABHOLKAR	2277	
SHRI JUSTICE A. S. BAGGA	1216	
SHRI JUSTICE D. S. ZOTING	1118	
SHRI JUSTICE V. C. DAGA	3137	
SHRI JUSTICE P. V. KAKADE	796	
SHRI JUSTICE S. A. BOBDE	1592	
SHRI JUSTICE A. M. KHANWILKAR	4281	



<b>NAME OF THE HON'BLE JUDGES</b>	<b>NUMBER OF CASES DISPOSED DURING THE YEAR 2006</b>	<b>REMARK</b>
SHRI JUSTICE DR. D. Y. CHANDRACHUD	2703	
SHRI JUSTICE A. P. DESHPANDE	2751	
SHRI JUSTICE D. B. BHOSALE	3573	
SHRI JUSTICE S. J. VAZIFDAR	2660	
SMT. JUSTICE N. N. MHATRE	3065	
SHRI JUSTICE P. V. HARDAS	2109	
SMT. JUSTICE V. K. TAHILRAMANI	2413	
SHRI JUSTICE D. G. KARNIK	2906	
SHRI JUSTICE J. P. DEVADHAR	1538	
SHRI JUSTICE R. S. MOHITE	3349	
SHRI JUSTICE V. M. KANADE	3010	
SHRI JUSTICE N. H. PATIL	2497	
SHRI JUSTICE V. G. MUNSHI	2015	
SHRI JUSTICE P. B. GAIKWAD	308	Retired on 8/7/06
SHRI JUSTICE S. B. DESHMUKH	1211	
SHRI JUSTICE A. S. OKA	7060	
SHRI JUSTICE K. J. ROHEE	1500	
SHRI JUSTICE S. R. SATHE	1139	
SHRI JUSTICE M. G. GAIKWAD	2011	
SHRI JUSTICE A. V. MOHTA	2869	
SHRI JUSTICE S. C. DHARMADHIKARI	4119	
SHRI JUSTICE B. R. GAVAI	3616	
SHRI JUSTICE A. P. LAVANDE	2677	
SHRI JUSTICE A. H. JOSHI	3418	
SHRI JUSTICE B. P. DHARMADHIKARI	3492	
SHRI JUSTICE S. U. KAMDAR	1929	
SHRI JUSTICE N. A. BRITTO	1297	
SHRI JUSTICE S. P. KUKDAY	1560	
SMT. JUSTICE V. A. NAIK	1805	

<b>NAME OF THE HON'BLE JUDGES</b>	<b>NUMBER OF CASES DISPOSED DURING THE YEAR 2006</b>	<b>REMARK</b>
SHRI JUSTICE J. H. BHATIA	2313	
SHRI JUSTICE R. C. CHAVAN	3424	
SMT. JUSTICE R. S. DALVI	1736	
SHRI JUSTICE S. R. DONGAONKAR	1809	Appointed on 27/02/06
SHRI JUSTICE V. R. KINGAONKAR	1888	Appointed on 27/02/06
SHRI JUSTICE A. B. CHAUDHARY	1191	Appointed on 08/09/06
SHRI JUSTICE R. M. BORDE	787	Appointed on 08/09/06
SHRI JUSTICE R. V. MORE	997	Appointed on 08/09/06
SHRI JUSTICE R. M. SAWANT	848	Appointed on 08/09/06
SHRI JUSTICE P. R. BORKAR	906	Appointed on 08/09/06
SHRI JUSTICE C. L. PANGARKAR	313	Appointed on 08/09/06
<b>TOTAL:</b>	<b>139183</b>	

Note : The statement is as per the computer record as updated till 23.02.07.

Date: 23/02/2007

sd/-  
(C. V. Bhadang)  
Registrar(Judicial)